

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

NO. 03-E-394

M. ELAINE TEFFT

V.

BEDFORD SCHOOL DISTRICT

ORDER ON PLAINTIFF'S APPLICATION FOR PRELIMINARY INJUNCTION
AND DEFENDANT'S MOTION TO DISMISS

LYNN, J.

The plaintiff, M. Elaine Tefft, instituted this action against the defendant, the Bedford School District (district), seeking an order from this court either (1) requiring that Article 1 of the warrant for an upcoming special school district meeting be divided into two separate questions or, alternatively, (2) enjoining the district from proceeding with a vote on Article 1 for a period of six months in order to "afford both parties the opportunity for complete due process." On September 23, 2003, the court held a hearing on plaintiff's application for a preliminary injunction and defendant's motion to dismiss. I conclude that plaintiff's petition fails to state any legally cognizable basis for relief and that the motion to dismiss must therefore be granted.

Based on the offers of proof submitted at the hearing, the following facts appear to be undisputed. Following the appropriate statutory procedures, the district has scheduled a special district meeting for October 2 and November 4, 2003. Because the district has adopted the official ballot (also known as "SB2") procedure, see RSA 40:13 (Supp. 2002), the meeting will be conducted in two stages: the so-called

deliberative session will be held on October 2, and the final vote on the official written ballot will occur on November 4. The special meeting was not called on the basis of an “emergency.” Therefore, in order for any votes taken at the meeting to be legally valid, the number of ballots cast must “be equal in number to at least ½ of the number of voters of [the] district entitled to vote at the regular meeting next proceeding [the] special meeting.” RSA 197:3, I(a) (1999).

Article 1 of the warrant for the special meeting reads as follows:

Shall the School District raise and appropriate a total sum of Thirty Million Dollars (\$30,000,000.00) (Gross Budget) for the purposes of constructing and equipping an approximately 1200 student capacity new high school building (with a core capacity of 1500 students) and associated facilities to be located on land owned by the District at Nashua and County Roads, Bedford; and shall the District authorize the issuance of bonds or notes of not more than the total amount of Thirty Million Dollars (\$30,000,000.00) for such purposes in accordance with the provisions of the Municipal Finance Act (RSA Chapter 33); and shall it authorize the School Board to issue and negotiate such bonds or notes and to determine the rates of interest thereon and the maturities and other terms thereof;

and, further, shall the District authorize the School Board to execute the twenty (20) year High School Maintenance (Tuition) Agreement with the Manchester School District on behalf of the District and to submit it to the New Hampshire Board of Education for approval pursuant to RSA 194:22, and shall it also authorize the School Board, when and if appropriate, to give notice of an early termination of such Agreement, as provided therein, and, finally, shall it authorize the School Board to take such other and further action with respect to such Agreement as may be appropriate to effectuate the purposes of this Article? (The School Board recommends a “yes” vote on this question.) (3/5ths ballot vote required.)

Plaintiff contends that by combining two separate issues – (1) whether the district should bond \$30,000,000.00 to build a new high school, and (2) whether the district should enter into a 20 year tuition contract with Manchester – on a single ballot

question, Article 1 infringes upon her state and federal constitutional right to vote. Specifically, plaintiff asserts that while she is desirous of voting in favor of the long-term tuition contract with Manchester, she will be unable to do so unless she also votes in favor of building a new high school, which she opposes. Similarly, plaintiff urges that those who may favor a new high school, but oppose the tuition contract, are forced to vote in favor of the latter in order to obtain the former.

While the importance of the right to vote cannot be doubted, it is apparent that Article 1 works no infringement of this fundamental right. Plaintiff will have the same right to vote on October 2nd and November 4th as will every other citizen of lawful age who resides in the district. What plaintiff actually seeks is a ruling that her “right to vote” includes a right to vote on questions that are framed in a manner to her liking. In essence, plaintiff asks that I impose upon the district the so-called “single subject” rule, i.e., a requirement that would limit each warrant article to addressing a single subject matter. A number of states have constitutional or statutory provisions which implement a single subject rule in various contexts. New Hampshire has no pertinent constitutional provision, but the legislature has seen fit to impose the rule in certain specific circumstances. For example, RSA 49-B:5, II(a) (Supp. 2002), which establishes the procedures for amending municipal charters, states, “Each amendment shall be limited to a single subject but more than one section of the charter may be amended as long as it is germane to that subject.” There is no similar restriction on the format for school district warrant articles. Instead, RSA 197:5 (1999) simply states that district meetings are to be “warned” by the school board and that the warrant must state

“the time and place of the meeting and the subject matter of the business to be acted upon.” (Emphasis added.) It cannot be seriously argued that the warrant at issue here fails to reasonably appraise district voters of the subject matter to be acted upon at the special meeting.

There is limited authority for the view that the single subject rule may be adopted by courts notwithstanding the absence of a specific constitutional or statutory mandate. See Antuono v. City of Tampa, 99 So. 324, 326-27 (Fla. 1924); but see Charter Review Com’n. v. Scott, 647 So.2d 835, 837 (Fla. 1994). Indeed, arguably the New Hampshire Supreme Court has already accepted this view, as evidenced by the court’s recent decision in Handley v. Town of Hooksett, 147 N.H. 184 (2001). Handley addressed on the merits a claimed violation of the single subject rule without considering whether there was any specific constitutional or statutory authority requiring that the rule be applied to the zoning amendments at issue in that case. See id. at 189-91. I find it unnecessary to decide whether Handley presages that the single subject rule may have become part of the common law of New Hampshire because, even assuming that the rule is applicable to this case, it is clear that Article 1 does not violate the rule.

The single subject rule does not prevent the inclusion of multiple topics in a single ballot question as long as each topic is germane to the overall purpose or object of the proposal. Thus, in Albert v. City of Laconia, 134 N.H. 355 (1991), the court rejected a challenge to the validity of amendments to the Laconia city charter which (1) reduced the size of the city council, (2) eliminated “at large” council seats, (3) provided for direct popular election of the mayor, and (4) reduced the mayor’s voting power as a

member of the council. The court found that all of these proposed charter amendments were germane to “a single concern: reduction in the number and voting power of the ‘at-large’ elected councilor seats, which, in turn, would vest greater voting power in the city’s ward councilors.” Id. at 360. Similarly, in Handley the court found no violation of the single subject rule where a variety of zoning amendments that proposed increasing the square footage and frontage requirements for lots in medium- and high-density districts were combined in a single ballot question. The court held that the proposed changes to the zoning ordinance were interrelated because they all were predicated upon the impact of public water and sewage services provided to each affected area and because the use of separate questions might have produced “an anomalous result where one lot size would be treated disproportionately from others.” 147 N.H. at 190.

In this case, the bond issue and the tuition contract aspects of Article 1 are interrelated because both form part of an overall financing proposal for the construction of a new high school for the district. The district is already a party to a three year tuition contract with Manchester. That contract requires the district to contribute approximately \$10.6 million to the cost of capital improvements made or to be made by Manchester. As matters now stand, the contract requires the district to pay these costs over the next three years. Consequently, if Article 1 contained only the proposal for the bond issue for a high school, approval of the article would have no affect on the district’s obligations under the contract with Manchester. Hence, the taxpayers of the district would have to bear not only the \$30 million cost of building a new high school within three years (before the agreement expired) but also would have to pay the additional

\$10.6 million to Manchester during this same period. However, the Manchester contract also contains an option provision, which gives the district until next spring to extend the term of the contract to 20 years. If the option is exercised, the district may still withdraw from the contract at the 5, 10 or 15 year points, but exercise of the option also will allow the district to spread its \$10.6 million payment to Manchester over a period of ten years. By including the contract extension along with the bond issue in a single ballot question, the district seeks to insure that, if the voters choose to build a high school, its impact on the taxpayers will be lessened, the district will have more flexibility with respect to the timing of construction, and the district will have a greater opportunity to negotiate with Manchester about continuing to send some of its students to a Manchester high school even after a new Bedford High School is completed. Given the Hadley court's admonition that the single subject rule "should be liberally construed," 147 N.H. at 190, I hold that these goals are "naturally and logically connected," id., to the purpose of Article 1 – to determine if the district should build its own high school.

Plaintiff also contends that joinder of the bond issue and tuition contract in the same question is improper because approval of the bond issue requires a 3/5th super-majority vote, whereas the tuition contract can be approved by a simple majority. Compare RSA 33:8 (Supp. 2002) with RSA 194:21-b (1999). This argument might have some force if Article 1 was drafted in such a manner as to create the impression the tuition contract was intended as a stand-alone alternative to the bonding of a new high school. In such circumstances, an affirmative vote on Article 1 by more than a

majority but less than 3/5 of voters could result in confusion as to whether the tuition contract had been approved or rejected. But the text of Article 1 cannot plausibly be read in this fashion. The district concedes that without a 3/5 vote the article will fail in its entirety, and the last parenthetical of the article specifically indicates "3/5ths ballot vote required." Plaintiff has offered no evidence that she is, or that anyone else could be, reasonably confused as to the possibility that the tuition contract extension might take effect in the absence of the super-majority needed to approve the bond issue. In fact, plaintiff concedes her understanding that Article 1 is an all-or-nothing proposition, none of the component parts of which will take effect unless the article is approved by 3/5 of the voters. Far from suggesting that the article is unclear or confusing, plaintiff's entire argument is premised on the thesis that if the tuition contract extension was presented as a stand-alone question, her view that the extension should be adopted (as an alternative to building a high school) would have a better chance of prevailing because then it would require approval by only a simple majority. While this political assessment of the mood of the district may be accurate, such considerations obviously afford no basis for awarding judicial relief to the plaintiff.

For the reasons stated above, defendant's motion to dismiss is hereby granted.

BY THE COURT:

September 25, 2003

ROBERT J. LYNN
Associate Justice

